

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No. EB-TCD-12-00000418 ¹
)	
Net One International)	NAL/Acct. No. 201232170002
Net One, LLC)	
Farrahtel International, LLC)	FRN: 0004337556
)	
Apparent Liability for Forfeiture)	

ORDER OF FORFEITURE

Adopted: January 15, 2014

Released: January 15, 2014

By the Acting Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order of Forfeiture, we affirm our findings in the December 9, 2011, *Notice of Apparent Liability for Forfeiture (NAL or Net One NAL)*² that Net One International, Net One, LLC, and Farrahtel International, LLC (collectively, Net One or the Company) willfully or repeatedly failed to comply with a Commission order issued by the Enforcement Bureau (Bureau)³ to produce certain information and documents relating to an investigation of Net One's possible violations of Section 201(b) of the Communications Act of 1934, as amended (Communications Act or Act).⁴ Pursuant to Section 503(b)(1)(B) of the Act,⁵ we assess the monetary forfeiture proposed in the *Net One NAL* of twenty-five thousand dollars (\$25,000) against Net One.

II. BACKGROUND

2. On July 15, 2011, the Bureau sent a letter of inquiry (LOI) to Net One, ordering Net One to provide certain information and documents related to its billing practices and its offering of prepaid telecommunications services.⁶ The Bureau directed Net One to respond to the LOI on or before August 4,

¹ This case was formerly assigned the file number EB-11-TC-063. In January 2012, the Telecommunications Consumers Division assigned the case a new file number.

² *Net One International, et al.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (EB 2011) (*Net One NAL*). Net One is a common carrier that provides calling card services.

³ The Bureau order was issued pursuant to delegated authority. See 47 U.S.C. § 155(c)(1)-(3).

⁴ 47 U.S.C. § 201(b).

⁵ 47 U.S.C. § 503(b)(1)(B).

⁶ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Net One International (July 15, 2011) (on file in EB-TCD-12-00000418).

2011. Net One received and signed for the LOI on July 19, 2011,⁷ but neither contacted the Bureau nor responded to the LOI by the filing deadline. On August 29, 2011, the Bureau advised Net One that the due date had passed and again ordered the Company to respond to the LOI.⁸ Again, Net One failed to respond. Thus, on December 9, 2011, the Bureau released the *Net One NAL*, proposing a forfeiture of \$25,000 for Net One's failure to respond to the LOI, and again ordering the Company to produce the documents and information requested, this time by no later than December 19, 2011.

3. Net One contacted the Bureau on the December 19th deadline and requested an extension of time until December 23rd to file its response.⁹ The Bureau granted Net One's request.¹⁰ On December 22, 2011, Net One filed a response to the LOI.¹¹ The Bureau advised Net One that its LOI response was incomplete, and again ordered the Company to fully respond.¹² On January 20, 2012, Net One submitted a supplemental response to the LOI¹³ as well as a response to the *Net One NAL*.¹⁴ In its filing, Net One asserted that it had "remitted the remaining information" responsive to the LOI, in accordance with the latest extension of time.¹⁵

4. In fact, however, Net One still had not produced all documents and information requested in the LOI. Bureau staff pointed out the deficiencies to Net One and again directed the Company to provide a complete response.¹⁶ On April 19, 2012, Net One provided a further supplemental response. Again, Net One failed to produce all documents and information required by the LOI; for example, the Company failed to provide a list of customer complaints, the number of customers billed each month, a

⁷ The Winter Park, FL post office stamped the return receipt card July 19, 2011. The card was apparently signed by El Bachir Alaoui Hichami, the Treasurer of Net One.

⁸ See E-mail from Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau, to El Bachir Alaoui Hichami (Aug. 29, 2011, 11:35 EST) (on file in EB-TCD-12-00000418).

⁹ See E-mail from Amir Elmasri to Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 19, 2011, 12:55 EDT) (on file in EB-TCD-12-00000418).

¹⁰ See E-mail from Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau, to Amir Elmasri (Dec. 19, 2011, 13:32 EDT) (on file in EB-TCD-12-00000418).

¹¹ See E-mail from Amir Elmasri, VP, Net One International to Kimberly Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 22, 2011, 18:21 EDT) (on file in EB-TCD-12-00000418).

¹² See E-mail from Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau, to Amir Elmasri VP, Net One International (Jan. 9, 2012, 14:07 EDT) (on file in EB-TCD-12-00000418).

¹³ See E-mail from Amir Elmasri, VP, Net One International to Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 20, 2012, 19:01 EDT) (on file in EB-TCD-12-00000418). Staff advised Net One that the Company was "required to provide full and complete responses to all [LOI] questions" and that the "LOI requested complaints or inquiries, written or otherwise, since August 1, 2010. This means all complaints and inquiries submitted since that date, not just a sample." See E-mail from Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau, to Amir Elmasri VP, Net One International (Jan. 26, 2012, 10:01 EDT) (on file in EB-TCD-12-00000418). Net One provided two additional customer complaints. See E-mail from Amir Elmasri, VP, Net One International to Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 29, 2012, 19:05 EDT) (on file in EB-TCD-12-00000418).

¹⁴ See Letter from Thomas Gainor to Marlene Dortch, Secretary, FCC (Jan. 20, 2012) (on file in EB-TCD-12-00000418) (NAL Response).

¹⁵ NAL Response at 2.

¹⁶ See E-mail from Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau, to Amir Elmasri VP, Net One International (Apr. 10, 2012, 11:22 EST) (on file in EB-TCD-12-00000418).

detailed description of how the Company verifies disputed billing, and copies of all complaints submitted during the time period requested in the LOI.¹⁷ The Company has yet to provide a complete response to the Bureau's LOI.

5. In response to the *NAL*, Net One admits that it failed to timely respond to the Bureau's LOI.¹⁸ Net One argues that it "is a small company that is struggling to survive and has limited resources in terms of personnel."¹⁹ The Company acknowledges that it had "obtained several extensions of time in which to produce the relevant materials."²⁰ It characterizes its failure to respond as "an inadvertent oversight."²¹ Net One contends that the Bureau's LOI was "inadvertently misdirected and not acted upon" as a result of "turnover of a key executive at Net One and an internal process that ultimately has proven flawed."²² Net One requests that the *NAL* "be cancelled or otherwise reduced."²³

III. DISCUSSION

6. Section 503(b)(1)(B) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.²⁴ At the time of the subject violation, Section 503(b)(2)(B) of the Act authorized the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act, by common carriers.²⁵ In determining the amount of the proposed forfeiture, we must consider the factors enumerated in Section 503(b)(2)(E) of the Act: "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁶ Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations, and identify criteria, consistent with the Section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.²⁷ For example, we may adjust a penalty upward if it is "[e]gregious misconduct," involves an

¹⁷ Net One provided summaries of two customer complaints in September, 2012. See E-mail from Amir Elmasri, VP, Net One International to Mika Savir, Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 21, 2012, 11:42 EST) (on file in EB-TCDD-12-00000418).

¹⁸ *NAL* Response at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1.

²³ *Id.* at 2.

²⁴ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

²⁵ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment "shall apply only to violations that occur after the date the increase takes effect," however, we apply the forfeiture penalties in effect at the time the apparent violation took place. 28 U.S.C. § 2461 note (6).

²⁶ See 47 U.S.C. § 503(b)(2)(E).

²⁷ 47 C.F.R. § 1.80(b)(8) note.

“[i]ntentional violation,” or involves “[r]epeated or continuous violation[s].”²⁸

7. Net One has failed to persuade us that there is any basis for canceling or reducing the amount of the forfeiture. The Company’s claim that its failure to respond to the LOI was “inadvertent,” and a result of a “flawed process” and personnel changes, is simply not credible given the facts. If Net One’s failure to respond to the LOI had been a genuine mistake, one would have expected, for example, the Company to bring its conduct into compliance, or at the very least contact Bureau staff about its compliance difficulties, after becoming aware of its failings. However, Net One completely disregarded not only the original deadline for response to the LOI, but also the subsequent warning about the need to respond and the consequences of failing to do so. Moreover, since the NAL was issued, Net One has continued to fail to fully respond to the NAL, notwithstanding the Bureau repeatedly advising Net One about the deficiencies in its responses. Net One’s conduct, therefore, does not appear to be “inadvertent,” but rather “egregious, intentional, and continuous,” as we found in the NAL.²⁹ These factors provided a basis for an upward adjustment for a forfeiture, and not the reduction or cancellation sought by Net One.

8. Further, we find no basis for reducing or cancelling the forfeiture based on Net One’s statement that “it is a small company that is struggling to survive.”³⁰ The *Net One NAL* was clear on the standard of review for considering a reduction or cancellation of a proposed forfeiture based on an inability to pay.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.³¹

Net One provided no such documentation and we, therefore, decline to reduce or cancel the forfeiture based on Net One’s ability to pay.

IV. CONCLUSION

9. After reviewing the record in this case and the information Net One provided in its NAL Response, we conclude that the proposed \$25,000 penalty is appropriate. This penalty will serve as an adequate deterrent and reflects the egregious nature of Net One’s conduct and Net One’s disregard for the Commission’s authority and investigatory process. Accordingly, the Bureau affirms the *NAL* and finds that Net One violated a validly issued Commission order to respond to a Bureau LOI and assess the \$25,000 forfeiture against the Company.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b) and Section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that Net One International, Net One, LLC, and Farrahtel International, LLC, jointly and severally **SHALL FORFEIT** to the United States government the sum of twenty-five thousand dollars (\$25,000) for willfully or repeatedly violating a Commission order.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the

²⁸ *Id.*

²⁹ *Net One NAL*, 26 FCC Rcd at 16495, para. 8.

³⁰ NAL Response at 2.

³¹ *Net One NAL*, 26 FCC Rcd at 16497, para. 15.

Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.³² If the forfeiture is not paid within the period specified, the case may be referred to the United States Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³³ Net One International, Net One, LLC, and Farrahtel International, LLC, shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.³⁵ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

³² 47 C.F.R. § 1.80.

³³ 47 U.S.C. § 504(a).

³⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁵ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this Order for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Thomas Gainor, Moffa, Gainor, and Sutton, PA, One Financial Plaza, Suite 2202, 100 Southeast Third Avenue, Fort Lauderdale, FL 33394, attorneys for Net One International, Net One, LLC, and Farrahtel International, LLC.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe
Acting Deputy Chief
Enforcement Bureau